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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARIA GUADALUPE ZAVALA,
Plaintiff,
v.
ANDREW M. SAUL, Commissioner
of Social Security,¹
Defendant.

CASE NO. CV 19-0999 AS

MEMORANDUM OPINION

For the reasons discussed below, IT IS HEREBY ORDERED that, pursuant to Sentence Four of 42 U.S.C. § 405(g), the Commissioner's decision is affirmed.

PROCEEDINGS

On February 11, 2019, Maria Guadalupe Zavala ("Plaintiff") filed a Complaint seeking review of the denial of her application

¹ Andrew M. Saul, Commissioner of Social Security, is substituted for his predecessor. See 42 U.S.C. § 405(g); Fed. R. Civ. P. 25(d).

1 for disability benefits by the Commissioner of Social Security
2 ("Commissioner" or "Agency"). (Dkt. No. 1). The parties have
3 consented to proceed before the undersigned United States
4 Magistrate Judge. (Dkt. Nos. 9, 16, 18). On June 26, 2019,
5 Defendant filed an Answer along with the Administrative Record
6 ("AR"). (Dkt. Nos. 13, 14). The parties filed a Joint Stipulation
7 ("Joint Stip.") on December 17, 2019, setting forth their
8 respective positions regarding Plaintiff's claims. (Dkt. No. 26).

9
10 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE RECORD**
11

12 On August 12, 2015, Plaintiff filed an application for
13 Disability Insurance Benefits ("DIB") pursuant to Title II of the
14 Social Security Act (the "Act"), alleging a disability onset date
15 of June 15, 2013. (AR 181-82). The Commissioner denied Plaintiff's
16 application initially and on reconsideration. (AR 92-114). On
17 October 10, 2017, Plaintiff, represented by counsel and assisted
18 by a Spanish language interpreter, testified at a hearing before
19 Administrative Law Judge Henry Koltys (the "ALJ"). (AR 37-91).
20 The ALJ also heard testimony from Abbe May, Psy.D., an impartial
21 vocational expert ("VE"), and Plaintiff's husband. (AR 65-79, 82-
22 89; see id. 279-80).

23
24 On January 31, 2018, the ALJ denied Plaintiff's request for
25 benefits. (AR 20-32). Applying the five-step sequential process,
26 the ALJ found at step one that Plaintiff has not engaged in
27 substantial gainful activity since June 15, 2013, the alleged onset
28 date. (AR 22). At step two, the ALJ found that Plaintiff's

1 bilateral carpal tunnel syndrome and a history of bilateral carpal
2 tunnel releases are severe impairments.² (AR 22). At step three,
3 the ALJ determined that Plaintiff does not have an impairment or
4 combination of impairments that meet or medically equal the
5 severity of any of the listings enumerated in the regulations.³
6 (AR 24).

7
8 The ALJ then assessed Plaintiff's residual functional capacity
9 ("RFC")⁴ and concluded that she has the capacity to perform light
10 work, as defined in 20 C.F.R. § 404.1567(b),⁵ except she is "limited
11 to occasional handling and fingering bilaterally." (AR 24). At
12 step four, the ALJ found that Plaintiff is unable to perform any
13 past relevant work. (AR 30). Based on Plaintiff's RFC, age,

14 ² The ALJ found that Plaintiff's depressive disorder did
15 not cause more than a minimal limitation in Plaintiff's ability to
16 perform basic mental work activities and is therefore nonsevere.
(AR 23-24).

17 ³ Specifically, the ALJ considered whether Plaintiff meets
18 the criteria of Listing 11.14 (peripheral neuropathy) and concluded
that she does not. (AR 24).

19 ⁴ A Residual Functional Capacity ("RFC") is what a claimant
20 can still do despite existing exertional and nonexertional
limitations. See 20 C.F.R. § 404.1545(a)(1).

21 ⁵ "Light work involves lifting no more than 20 pounds at a
22 time with frequent lifting or carrying of objects weighing up to
23 10 pounds. Even though the weight lifted may be very little, a
24 job is in this category when it requires a good deal of walking or
25 standing, or when it involves sitting most of the time with some
26 pushing and pulling of arm or leg controls. To be considered
27 capable of performing a full or wide range of light work, you must
28 have the ability to do substantially all of these activities. If
someone can do light work, we determine that he or she can also do
sedentary work, unless there are additional limiting factors such
as loss of fine dexterity or inability to sit for long periods of
time." 20 C.F.R. § 404.1567(b).

1 education, work experience, and the VE's testimony, the ALJ
2 determined at step five that there are jobs that exist in
3 significant numbers in the national economy that Plaintiff can have
4 performed, including counter clerk, storage facility clerk, and
5 rental clerk. (AR 30-32; see id. 26). Accordingly, the ALJ found
6 that Plaintiff has not been under a disability as defined in the
7 Act from June 15, 2013, the alleged onset date, through the date
8 of his decision. (AR 32).

9
10 The Appeals Council denied Plaintiff's request for review on
11 December 19, 2018. (AR 1-8). Plaintiff now seeks judicial review
12 of the ALJ's decision, which stands as the final decision of the
13 Commissioner. 42 U.S.C. §§ 405(g), 1383(c).

14 15 STANDARD OF REVIEW

16
17 This Court reviews the Commissioner's decision to determine
18 if: (1) the Commissioner's findings are supported by substantial
19 evidence; and (2) the Commissioner used proper legal standards. 42
20 U.S.C § 405(g); see Carmickle v. Comm'r, 533 F.3d 1155, 1159 (9th
21 Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007).
22 "Substantial evidence is more than a scintilla, but less than a
23 preponderance." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
24 1998). It is relevant evidence "which a reasonable person might
25 accept as adequate to support a conclusion." Hoopai, 499 F. 3d at
26 1074; Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996). To
27 determine whether substantial evidence supports a finding, "a court
28 must consider the record as a whole, weighing both evidence that

1 supports and evidence that detracts from the [Commissioner's]
2 conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir.
3 2001) (citation omitted); see Widmark v. Barnhart, 454 F.3d 1063,
4 1066 (9th Cir. 2006) (inferences "reasonably drawn from the record"
5 can constitute substantial evidence).

6
7 This Court "may not affirm [the Commissioner's] decision
8 simply by isolating a specific quantum of support evidence, but
9 must also consider evidence that detracts from [the Commissioner's]
10 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)
11 (citation omitted). However, the Court cannot disturb findings
12 supported by substantial evidence, even though there may exist
13 other evidence supporting Plaintiff's claim. See Torske v.
14 Richardson, 484 F.2d 59, 60 (9th Cir. 1973). "If the evidence can
15 reasonably support either affirming or reversing the
16 [Commissioner's] conclusion, [a] court may not substitute its
17 judgment for that of the [Commissioner]." Reddick, 157 F.3d 715,
18 720-21 (9th Cir. 1998) (citation omitted).

19 20 DISCUSSION

21
22 Plaintiff contends that the ALJ does not support his adverse
23 credibility determination with substantial evidence. (Joint Stip.
24 at 2-8). Defendant asserts that the ALJ properly considered
25 Plaintiff's subjective complaints. (Id. at 9-15).

1 **A. Legal Standard**

2
3 When assessing a claimant's credibility regarding subjective
4 pain or intensity of symptoms, the ALJ must engage in a two-step
5 analysis. Trevizo v. Berryhill, 871 F.3d 664, 678 (9th Cir. 2017).
6 First, the ALJ must determine if there is medical evidence of an
7 impairment that could reasonably produce the symptoms alleged.
8 Garrison v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014). "In this
9 analysis, the claimant is not required to show that her impairment
10 could reasonably be expected to cause the severity of the symptom
11 she has alleged; she need only show that it could reasonably have
12 caused some degree of the symptom." Id. (emphasis in original)
13 (citation omitted). "Nor must a claimant produce objective medical
14 evidence of the pain or fatigue itself, or the severity thereof."
15 Id. (citation omitted).

16
17 If the claimant satisfies this first step, and there is no
18 evidence of malingering, the ALJ must provide specific, clear and
19 convincing reasons for rejecting the claimant's testimony about
20 the symptom severity. Trevizo, 871 F.3d at 678 (citation omitted);
21 see also Smolen, 80 F.3d at 1284 ("[T]he ALJ may reject the
22 claimant's testimony regarding the severity of her symptoms only
23 if he makes specific findings stating clear and convincing reasons
24 for doing so."); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883
25 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of malingering
26 based on affirmative evidence thereof, he or she may only find an
27 applicant not credible by making specific findings as to
28 credibility and stating clear and convincing reasons for each.").

1 "This is not an easy requirement to meet: The clear and convincing
2 standard is the most demanding required in Social Security cases."
3 Garrison, 759 F.3d at 1015 (citation omitted).

4
5 Where, as here, the ALJ finds that a claimant suffers from a
6 medically determinable physical or mental impairment that could
7 reasonably be expected to produce her alleged symptoms, the ALJ
8 must evaluate "the intensity and persistence of those symptoms to
9 determine the extent to which the symptoms limit an individual's
10 ability to perform work-related activities for an adult." Soc.
11 Sec. Ruling ("SSR") 16-3p, 2017 WL 5180304, at *3.⁶ SSR 16-3p
12 superseded SSR 96-7p and eliminated the term "credibility" from
13 the Agency's sub-regulatory policy. However, the Ninth Circuit has
14 noted that SSR 16-3p

15
16 makes clear what [the Ninth Circuit's] precedent already
17 required: that assessments of an individual's testimony
18 by an ALJ are designed to "evaluate the intensity and
19 persistence of symptoms after the ALJ finds that the
20 individual has a medically determinable impairment(s)
21 that could reasonably be expected to produce those

22
23
24
25 ⁶ SSR 16-3p, which superseded SSR 96-7p, is applicable to
26 this case, because SSR 16-3p, which became effective on March 28,
27 2016, was in effect at the time of the Appeal Council's December
28 19, 2018 denial of Plaintiff's request for review. Nevertheless,
the regulations on evaluating a claimant's symptoms, including
pain, see 20 C.F.R. §§ 404.1529 and 416.929, have not changed.

1 symptoms, and not to delve into wide-ranging scrutiny of
2 the claimant's character and apparent truthfulness.

3
4 Trevizo, 871 F.3d at 679 n.5 (quoting SSR 16-3p) (alterations
5 omitted).

6
7 In discrediting the claimant's subjective symptom testimony,
8 the ALJ may consider: "ordinary techniques of credibility
9 evaluation, such as . . . prior inconsistent statements concerning
10 the symptoms, and other testimony by the claimant that appears less
11 than candid; unexplained or inadequately explained failure to seek
12 treatment or to follow a prescribed course of treatment; and the
13 claimant's daily activities." Ghanim v. Colvin, 763 F.3d 1154,
14 1163 (9th Cir. 2014) (citation omitted). Inconsistencies between
15 a claimant's testimony and conduct, or internal contradictions in
16 the claimant's testimony, also may be relevant. Burrell v. Colvin,
17 775 F.3d 1133, 1137 (9th Cir. 2014); Light v. Soc. Sec. Admin.,
18 119 F.3d 789, 792 (9th Cir. 1997). In addition, the ALJ may
19 consider the observations of treating and examining physicians
20 regarding, among other matters, the functional restrictions caused
21 by the claimant's symptoms. Smolen, 80 F.3d at 1284; accord
22 Burrell, 775 F.3d at 1137. However, it is improper for an ALJ to
23 reject subjective testimony based "solely" on its inconsistencies
24 with the objective medical evidence presented. Bray v. Comm'r of
25 Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (citation
26 omitted).

1 Further, the ALJ must make a credibility determination with
2 findings that are "sufficiently specific to permit the court to
3 conclude that the ALJ did not arbitrarily discredit claimant's
4 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.
5 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d 487,
6 493 (9th Cir. 2015) ("A finding that a claimant's testimony is not
7 credible must be sufficiently specific to allow a reviewing court
8 to conclude the adjudicator rejected the claimant's testimony on
9 permissible grounds and did not arbitrarily discredit a claimant's
10 testimony regarding pain.") (citation omitted). Although an ALJ's
11 interpretation of a claimant's testimony may not be the only
12 reasonable one, if it is supported by substantial evidence, "it is
13 not [the court's] role to second-guess it." Rollins v. Massanari,
14 261 F.3d 853, 857 (9th Cir. 2001).

15
16 **B. Plaintiff's Subjective Statements**

17
18 Plaintiff asserts disability due to migraines, neck and
19 shoulder pain, severe back pain, knee injury, high cholesterol,
20 memory problems, depression, cyst on right hand, and bilateral
21 carpal tunnel syndrome. (AR 198). In September 2015, she submitted
22 an adult function report. (AR 238-46). Plaintiff asserted she is
23 unable to work due to carpal tunnel on both hands, back, shoulders
24 and neck pain, and migraine headaches. (AR 238). She asserted
25 difficulty with personal care: pain interferes with her ability to
26 dress, bathe, and feed herself. (AR 239). Nevertheless, she can
27 prepare her own meals and perform some housework. (AR 240).
28 Plaintiff is able to drive and ride in a car, shop in stores, and

1 goes to church and movies with her family. (AR 241-42). Plaintiff
2 can walk 200 yards before needing to rest for 10 to 20 minutes.
3 (AR 243).

4
5 At Plaintiff's October 2017 hearing, she testified that she
6 cannot work due to pain in her hands, legs, knees, stomach, and
7 neck radiating down to her hands. (AR 45-47). She has difficulty
8 lifting, holding, and picking up objects. (AR 45). The pain makes
9 it difficult for Plaintiff to perform household chores, including
10 mopping, vacuuming, sweeping, and washing dishes. (AR 45-46). Her
11 medications reduce the pain from 8/10 to 4-5/10. (AR 53-55).
12 Plaintiff also suffers with chronic headaches and memory
13 impairment. (AR 48-49). Her headache medication reduces the pain
14 to 2/10. (AR 55). She experiences dizziness and drowsiness from
15 her medications. (AR 60-61).

16
17 Plaintiff can stand or walk for only 20 minutes before needing
18 to sit down. (AR 46-47). She can sit for four hours, walk for
19 one to two hours, and stand for one hour in an eight-hour workday.
20 (AR 53). She can lift only five to ten pounds. (AR 47).
21 Plaintiff's husband and her two daughters, ages 19 and 12, help
22 with household chores. (AR 49-50, 61-62). Plaintiff is home alone
23 during the day while her husband and older daughter is working and
24 the younger daughter is in school. (AR 51). She is able to pay
25 bills, make simple meals, wash dishes, do laundry, clean the house,
26 bathe herself, exercise daily, and walk two to three times a week.
27 (AR 61-64). She drives daily, delivering lunch to her husband at
28 work and taking her daughter to school. (AR 63).

1 **C. Plaintiff's Husband's Subjective Statements**

2
3 In September 2015, Joaquin Zavala, Plaintiff's husband,
4 submitted a third-party function report. (AR 210-17). He asserted
5 that Plaintiff is in pain most of the time, causing her difficulty
6 with walking, standing, and sitting for extended periods. (AR
7 210). During the day, Plaintiff takes their daughter to school,
8 prepares her own meals, and performs household chores. (AR 211-
9 12). She is able to drive and ride in a car and goes to church
10 and to movies weekly. (AR 213-14). Plaintiff can walk 200 yards
11 before needing to rest. (AR 215).

12
13 At the October 2017 hearing, Plaintiff's husband testified
14 that Plaintiff is alone during the day while he works as a mail
15 carrier. (AR 82-83). Plaintiff is able to pay bills, grocery
16 shop, cook, clean, and do the laundry, but her family also
17 participates with these chores. (AR 83-84). Plaintiff drives
18 daily, bringing lunch to her husband and occasionally taking or
19 picking up her daughter from school or work. (AR 84-86).
20 Plaintiff's husband stated that Plaintiff exercises daily and goes
21 for a walk three to five times weekly. (AR 87).

22
23 **D. The ALJ's Credibility Findings**

24
25 The ALJ found that Plaintiff's testimony

26
27 was not supported by the medical evidence to the extent
28 [she] alleged [she] could not perform any work activity.

1 That allegation was undermined by the medical evidence
2 that showed good postoperative recovery following a
3 history of bilateral carpal tunnel releases. The medical
4 sources also did not assess functional limitations that
5 would preclude all work activity. [Plaintiff's]
6 description of her functional capacity appeared
7 exaggerated in light of the medical evidence and her
8 acknowledgment throughout the record regarding her daily
9 activities. . . . The allegation of disability was
10 further damage[d] by [Plaintiff's] admission that she
11 received unemployment benefits after the alleged onset
12 date. In order to receive unemployment benefits she had
13 to certify that she was ready, willing, and able to work.

14
15 (AR 25-26, 30).

16
17 **E. Analysis**

18
19 As set forth below, the ALJ provided clear and convincing
20 reasons for discrediting Plaintiff's testimony about the intensity,
21 persistence and limiting effects of her pain and symptoms.

22
23 First, Plaintiff's allegations "appear exaggerated in light
24 of . . . her acknowledgment throughout the record regarding her
25 daily activities." (AR 26; see id. 30). "ALJs must be especially
26 cautious in concluding that daily activities are inconsistent with
27 testimony about pain, because impairments that would unquestionably
28 preclude work and all the pressures of a workplace environment will

1 often be consistent with doing more than merely resting in bed all
2 day." Garrison, 759 F.3d at 1016. Nevertheless, an ALJ properly
3 may consider the claimant's daily activities in weighing
4 credibility. Tommasetti, 533 F.3d at 1039. If a claimant's level
5 of activity is inconsistent with the claimant's asserted
6 limitations, it has a bearing on credibility. Garrison, 759 F.3d
7 at 1016. Here, Plaintiff asserted that headaches, memory
8 impairment, and pain in her hands, neck, knees, and legs
9 significantly limit her ability to lift, carry, sit, stand, and
10 walk. (AR 45-64, 198, 238-46). Nevertheless, Plaintiff
11 acknowledged being able to pay bills, make simple meals, wash
12 dishes, do laundry, clean the house, bathe herself, exercise daily,
13 and walk two to three times a week. (AR 61-64; 240). She manages
14 being home alone during the day while her husband and older daughter
15 are working and her younger daughter is in school. (AR 51). She
16 is able to drive and ride in a car, shop in stores, and attend
17 church and movies with her family on a weekly basis. (AR 241-42).
18 On a daily basis, Plaintiff delivers lunch to her husband at work
19 and takes her daughter to school. (AR 63). These acknowledged
20 activities of daily living "are entirely inconsistent with
21 [Plaintiff's] allegation of disability." (AR 30); see Ghanim, 763
22 F.3d at 1165 ("Engaging in daily activities that are incompatible
23 with the severity of symptoms alleged can support an adverse
24 credibility determination.").

25
26 Plaintiff argues that she is "not alleging an inability to do
27 all work activity." (Joint Stip. at 7). Instead, she contends
28 she is "alleging a limitation to sedentary work, which would result

1 in benefits under the grid rules as of her 50th birthday." (Id.).
2 But Plaintiff did not raise this argument at her hearing or in her
3 adult function report. Further, she asserts being able to sit for
4 only four hours in an eight-hour workday (AR 47), which is
5 incompatible with sedentary work. See SSR 83-10, at *5 ("Since
6 being on one's feet is required 'occasionally' at the sedentary
7 level of exertion, periods of standing or walking should generally
8 total no more than about 2 hours of an 8-hour workday, and sitting
9 should generally total approximately 6 hours of an 8-hour
10 workday."). In any event, Plaintiff's acknowledged activities of
11 daily living, including driving, performing household chores,
12 attending movies, and shopping in stores are inconsistent with her
13 testimony that she is not capable of even sedentary work.

14
15 Second, the ALJ found that Plaintiff's "allegation of
16 disability was undermined by the mild physical findings throughout
17 the record." (AR 30; see id. 25-29). Inconsistencies with the
18 objective medical evidence cannot be the sole ground for rejecting
19 a claimant's subjective testimony. Nevertheless, inconsistencies
20 are factors that the ALJ may consider when evaluating credibility.
21 Bray, 554 F.3d at 1227; Burch, 400 F.3d at 681; Rollins, 261 F.3d
22 at 857; see SSR 16-3p, at *5 ("objective medical evidence is a
23 useful indicator to help make reasonable conclusions about the
24 intensity and persistence of symptoms, including the effects those
25 symptoms may have on the ability to perform work-related
26 activities"); Carmickle, 533 F.3d at 1161 ("Contradiction with the
27 medical record is a sufficient basis for rejecting the claimant's
28 subjective testimony."). While Plaintiff has a history of

1 bilateral carpal tunnel releases and left knee surgery, she
2 recovered postoperatively without significant functional
3 limitations. In July 2013, Plaintiff's workers compensation
4 physician precluded her from gripping, grasping, pushing, and
5 pulling with her right hand. (AR 417). By February 2014, the
6 physician concluded that Plaintiff should avoid prolonged walking,
7 squatting, kneeling, ascending and descending stairs, working at
8 unprotected heights, and walking on uneven terrain. (AR 323).
9 However, by May 2014, the doctor opined that Plaintiff was
10 precluded only from very forceful activities and fine manipulation
11 with her hands. (AR 827). In August 2014, Plaintiff's hand surgeon
12 opined that Plaintiff is precluded from repetitive or forceful use
13 of her hands. (AR 926). From July 2013 through April 2014, Keith
14 Richards, M.D., repeatedly found Plaintiff's knees stable with good
15 range of motion and concluded that she could perform her past work
16 as a school bus driver at full duty status. (AR 340-47, 388-89,
17 393-95, 400, 403-04, 420). From November 2013 through March 2017,
18 physical examinations performed at Kaiser Permanente were all
19 within normal limits. (AR 1461-62, 1510, 1537, 1588, 1598, 1604,
20 1621, 1662, 1673, 1681, 1693, 1709, 1772-73, 1810, 1862-63, 1921,
21 2120-25, 2361, 2397-98, 2411, 2577, 2592-93, 2613, 2626, 2653,
22 2667, 2680). In July through October 2013, the Kaiser medical
23 records indicate normal mental status examinations. (AR 1335-430).
24 In July 2014, the records indicate that Plaintiff had been
25 successfully treated at a pain management program and that her pain
26 was controlled with medication management. (AR 1614-15). These
27 medical records are consistent with the ALJ's determination that
28 Plaintiff can perform a limited range of light work. (AR 24).

1 Plaintiff does not dispute this medical evidence. Instead,
2 she cites her five surgeries and the degenerative changes indicated
3 by x-rays and MRIs. (Joint Stip. at 7-8). However, these
4 diagnostic studies did not include any acute findings. In January
5 2013, an MRI indicated mild multilevel degenerative changes of the
6 cervical spine, most conspicuous at C5-C6. (AR 1156-57). After
7 Plaintiff's knee surgery, a postoperative diagnosis included loose
8 bodies in the knee, meniscus tear, and patella damage. (AR 500-
9 01). In December 2016, x-rays of Plaintiff's hands found mild
10 spine in multiple distal interphalangeal joints consistent with
11 mild degenerative change. (AR 2501). Further, "[t]he mere
12 existence of an impairment is insufficient proof of a disability."
13 Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir. 1993); see Key v.
14 Heckler, 754 F.2d 1545, 1549 (9th Cir. 1985) ("The mere diagnosis
15 of an impairment . . . is not sufficient to sustain a finding of
16 disability."); accord Lundell v. Colvin, 553 F. App'x 681, 684 (9th
17 Cir. 2014). Even if a claimant receives a particular diagnosis,
18 it does not necessarily follow that the claimant is disabled,
19 because it is the claimant's symptoms and true limitations that
20 generally determine whether she is disabled. See Rollins v.
21 Massanari, 261 F.3d 853, 856 (9th Cir. 2001); Gentle v. Barnhart,
22 430 F.3d 865, 868 (7th Cir. 2005) ("Conditions must not be confused
23 with disabilities. The social security disability benefits program
24 is not concerned with health as such, but rather with ability to
25 engage in full-time gainful employment."). While Plaintiff may
26 interpret the medical record differently, "[w]here evidence is
27 susceptible to more than one rational interpretation, it is the
28 ALJ's conclusion that must be upheld." Burch v. Barnhart, 400 F.3d

1 676, 679 (9th Cir. 2005). As the Court cannot conclude that the
2 ALJ's interpretation of the medical record was irrational, the
3 ALJ's decision must be upheld.

4
5 Third, the ALJ noted that Plaintiff "received unemployment
6 benefits after the alleged onset date." (Dkt. No. 30). The receipt
7 of unemployment benefits sometimes can undermine a claimant's
8 alleged inability to work full time. See Copeland v. Bowen, 861
9 F.2d 536, 542 (9th Cir. 1988) (upholding ALJ's rejection of
10 claimant's credibility where claimant had accepted unemployment
11 insurance benefits "apparently considering himself capable of work
12 and holding himself out as available for work"); see also Fennell
13 v. Berryhill, 721 F. App'x 652, 655 (9th Cir. 2018) (ALJ properly
14 discredited claimant's testimony where she held herself out as
15 available for full-time work when receiving unemployment benefits
16 during the adjudicatory period); Bray v. Commissioner of Social
17 Security Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (fact that a
18 claimant has sought out employment weighs against a finding of
19 disability); see also Ghanim v. Colvin, 763 F.3d 1154, 1165 (9th
20 Cir. 2014) ("continued receipt" of unemployment benefits can cast
21 doubt on a claim of disability); but see Webb v. Barnhart, 433 F.3d
22 683, 688 (9th Cir. 2005) ("That Webb sought employment suggests no
23 more than that he was doing his utmost, in spite of his health, to
24 support himself."). In California, however, an individual
25 available for only part-time work is not disqualified from
26 unemployment compensation eligibility. See Cal. Unemp. Ins. Code
27 § 1253.8; compare 20 C.F.R. § 404.1545(b) (claimant under the
28 Social Security Act is assessed for capacity to work "on a regular

1 and continuing basis"); SSR 96-8p, at *2 (defining "regular and
2 continuing basis" as "8 hours a day, for 5 days a week, or an
3 equivalent work schedule"). The record does not establish whether
4 Plaintiff held herself out as available for full-time or part-time
5 work. Indeed, Plaintiff testified that she did not look for any
6 work because she could not work. (AR 50-51). And the record does
7 not contain Plaintiff's application for unemployment compensation.
8 Accordingly, the Court finds that Plaintiff's receipt of
9 unemployment compensation does not give rise to a legally
10 sufficient reason to reject Plaintiff's allegations. See Carmickle
11 v. Commissioner, 533 F.3d at 1161-62 (9th Cir. 2008) (finding ALJ's
12 adverse credibility finding not supported by substantial evidence
13 where record failed to establish whether the claimant held himself
14 out as available for full-time or part-time work; observing that
15 only the former is inconsistent with disability allegations); Lind
16 v. Colvin, 2015 WL 1863313, at *3-4 (C.D. Cal. Apr. 23, 2015)
17 (record evidence of unemployment compensation inadequate to support
18 ALJ's adverse credibility determination where record did not
19 contain the claimant's unemployment benefits application, and did
20 not specify whether the claimant had certified he was available
21 for full-or part-time work). Nevertheless, any error in using the
22 receipt of unemployment benefits to undermine Plaintiff's
23 credibility is harmless because the other bases adequately support
24 the ALJ's credibility determination, as discussed above. See Farr
25 v. Berryhill, 706 F. App'x 363, 364 (9th Cir. 2017) ("Any error in
26 the ALJ's [use of unemployment benefits] for undermining Farr's
27 credibility was harmless because three other bases for discounting
28 Farr's testimony adequately support the ALJ's credibility

1 determination, and each finds ample support in the record."); see
2 also Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th
3 Cir. 2004) (concluding that, even if the record did not support
4 one of the ALJ's stated reasons for disbelieving a claimant's
5 testimony, the error was harmless).

6
7 Finally, the ALJ did not completely reject Plaintiff's
8 testimony. (AR 29). Indeed, the ALJ gave less than full weight
9 to the State agency physicians' assessments because they did not
10 have the benefit of Plaintiff's testimony at the hearing. (AR 29).
11 While the ALJ found that the State agency physicians' "limitation
12 to medium work with the fine manipulative limitations was generally
13 consistent with the record," the ALJ limited Plaintiff "to light
14 work, which views the evidence in the light most favorable to
15 [Plaintiff]." (AR 29). Based partially on Plaintiff's subjective
16 statements, the ALJ found that Plaintiff is capable of light work
17 except she is further limited to only occasional handling and
18 fingering bilaterally. (AR 24). While these limitations preclude
19 Plaintiff from performing any past relevant work, the ALJ found
20 that there are still jobs in the national economy that Plaintiff
21 can perform. (AR 30-32; see id. 65-79).

22
23 In sum, the ALJ offered clear and convincing reasons,
24 supported by substantial evidence in the record, for his adverse
25 credibility findings. Accordingly, because substantial evidence
26 supports the ALJ's assessment of Plaintiff's credibility, no remand
27 is required.

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LET JUDGMENT BE ENTERED ACCORDINGLY.

/s/

ALKA SAGAR

UNITED STATES MAGISTRATE JUDGE